

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Robert Pollak

**Date application filed with the Town Clerk:** November 28, 2005

**Nature of request:** To modify Special Permit ZBA FY2005-00037 to eliminate outdoor dining, an outdoor cooler and to modify Condition #17 to eliminate amplification of music

**Address:** 1185 North Pleasant Street (Map 5A, Parcel 87, B-VC Zoning District)

**Legal notice:** Published on 12/28/05 and 1/4/06 in the Daily Hampshire Gazette and sent to abutters on December 27, 2005.

**Board members:** Zina Tillona, Hilda Greenbaum and Russell Frank

**Submissions:** The petitioner submitted the following:

- A new site plan, based on a survey dated 12/7/05 by Harold Eaton
- A site lighting plan, locus map and proposed restaurant floor plan, drawn by Ford Gillen Architects, dated 12/23/05
- A Zoning Bylaw analysis of the proposal, prepared by Ford Gillen Architects
- A Management Plan and background information for the proposed restaurant "*The Mill River Café*"
- A lease signed by the applicant and Joseph Sacco for use of Mr. Sacco's parking area for vehicles of employees and patrons during the restaurant's normal business hours, dated 11/30/05

Town staff submitted the following:

- A memo from the zoning staff assistant addressing dimensional requirements, parking and the applicant's Management Plan, dated 1/5/06
- A memo from Jason Skeels, Town Engineer, addressing the parking area pavement, the width of the driveway entrance, rebuilding the catch basin, and the grease trap on the sanitary sewer line, dated 1/12/06

**Site Visit:** January 10, 2006

The petitioner was not present for the site visit. The Board observed the three rooms for dining of the former restaurant, saw where the interior changes were proposed and the parking area in the back of the lot. The restaurant is located on a corner of a village business center, with another restaurant next-door to the south, a bed-and-breakfast across the street, a Town library, a church and a shopping plaza with a post office and other businesses nearby

**Public Hearing:** January 12, 2006

Robert Pollak spoke to his application at the hearing. He stated that he is owner of a company

called "Wild Iris", under which a take-out pizza business called "Pizza Shark" operates, and a restaurant called "The Mill River Café" is proposed at 1185 North Pleasant Street.

Mr. Pollak came before the Board in July, 2005 and received a Special Permit FY2005-00037 for a restaurant at the same location. There were 22 conditions associated with that Special Permit. At least eight Special Permits had been issued previously for restaurants in the same location, mainly operating under the name of Daisy's. The most recent Daisy's prior to Mr. Pollak's permit was Special Permit FY2004-00024, which permitted live entertainment, alcohol service, and hours of operation until 1 AM.

An abutter appealed Mr. Pollak's FY2005-00037 Special Permit. The abutter objected to the proposed outdoor decks for dining, the outdoor cooler, and the adequacy of the parking.

Mr. Pollak stated that he is now re-applying and asking for the same type of restaurant as his 2005 Special Permit, except to make the following changes in order to appease the neighbor:

- He has signed a lease with a neighboring auto repair shop, Village Auto Service, owned by Joseph Sacco, to allow parking on Mr. Sacco's property for the restaurant employees and valet parking for customers.
- The proposed seating is forty-nine (49). His previous permit allowed for 58 seats indoors and 22 outdoors on the decks. Special Permits previous to Mr. Pollak's allowed for seating up to 60 indoors, with no extra parking required.
- Occupancy of the three indoor dining rooms is 61 according to Inspection Services.
- The decks and the extra cooler, which had extended into the front or side setback, are eliminated.
- The previous Special Permit included a small addition on the southern side of the building, which has been eliminated.
- With the two new handicapped accessible bathrooms and without the small addition, the dining room on the south-east corner of the restaurant will be eliminated.
- Live entertainment in the form of acoustic music will have no amplification. Other entertainment (poetry readings, keyboard music) will not be amplified either.
- The entertainment will be for dinner guests, with a few extra seats provided.
- The number of employees may be higher than for previous restaurants, but they include employees and delivery persons for the Pizza Shark business as well. Twelve employees is the upper limit of employees requested.

Ms. Greenbaum asked if the pizza business were moved to another location, would the number of employees be reduced. Mr. Pollak said that the pizza van drivers will be coming back to the restaurant location to park the vans wherever the pizza business is located. Ms. Tillona added that the applicant is requesting the upper limit of employees for the two businesses, which is included as part of the applicant's management plan.

The Board noted that the Addendum to the Management Plan is a summary of the three main things the applicant wishes to amend with the current application – 1) retract the request for outdoor dining decks; 2) retract the request for an outdoor cooler; 3) modify the request for live music with "low amplification" to live "acoustic music, poetry readings and public speakers."

Ms. Tillona opened the hearing for public comments. Nine people spoke with concerns.

Dan Burbine, 1178 North Pleasant Street, proprietor of the Black Walnut Inn across the street and the plaintiff for the appeal of Special Permit FY2005-00037, asked if a Special Permit is given to Mr. Pollak at the current hearing, will it stand on its own, independent of the earlier permit.

Ms. Tillona responded that it would be a valid Special Permit that could be implemented.

Mr. Burbine said that he had a "statement of concern" signed by 24 neighbors. He feels that the proposed restaurant will worsen the neighborhood in terms of noise and nuisances from the bar patrons. The statement asks that: 1) the restaurant closing be 10 p.m.; 2) the occupancy be limited to diners only; 3) a final parking plan, including placement of the delivery vans be submitted for approval; and 4) an annual review of the Special Permit, with the results sent to the Select Board.

Nonny Burack, 40 Valley Lane, said that the number of employees should include the musicians. She also said that she served on the North Amherst Library Committee, and has listened to plans for the intersection. It is a dangerous intersection now, and needs to be fixed before a restaurant is opened there.

Derik Shay, 31 Harris Street, said that he supports the applicant, but he has two kids who will be frightened by having such late hours of operation. Diners don't stay that late, only drinkers do, he said. The traffic lights don't always work at the intersection where the restaurant is, and can be dangerous there as well.

Don Lesser, 1164 North Pleasant Street, said that there is a reason that the neighbors are concerned. Drinkers from the nearby townhouses stand outside his house and make noise. If the restaurant is open until 1 a.m., it will allow more drunks in the neighborhood.

Ed Valerio, 1157 North Pleasant Street, said that he lives on a direct route from Hobart Lane to the restaurant. He cannot understand how the area can absorb more parking. He knows of no other restaurant that offers valet parking. It won't work, he said. Cars will park anywhere. He said that after 10 p.m. the place will be a bar, and that folks don't eat that late.

Joan Keochakian, 76 Shays Street, said that she is Chair of the Board of Fisher Home, two doors south of the restaurant. The Home was founded in 1909. One and ½ years ago, the home was given to Hospice, Inc to be used for six residents at the end of life. She is concerned about noise in the evening for these residents. They already have folks sleeping in the gazebo with bedrolls. She is concerned that the parking will be a problem as well.

Gillian Charbonneau, 1134 North Pleasant Street, said that he wants a restaurant, but the North Amherst is a tranquil village. He does not want the downtown venue (drinking and milling about) to come to North Amherst. He said that it's distressing and unbearable that there is vandalism late at night even without a drinking business. He wants a community with elders and children instead.

Russ Parker, 1148 North Pleasant Street, has retired parents living with him. They used to have the farm fields that are now Brandywine Apartments. Now North Amherst is very crowded, he said. He wants a restaurant, but not after 10 p.m.

Mr. Parker noted that a Special Permit was given in 2004 for a restaurant with alcohol. He asked why the neighbors weren't notified at that time, or for this application. The Board and the zoning staff assistant explained to the audience that those who live within 300 feet of the premises under consideration receive notices of public hearings for Special Permits. This is required by the State

Zoning Act. Many neighbors attending this current hearing live more than 300 feet away; hence they did not receive notices of the hearing.

Joseph Schwartz, 11 Meadow Street, said that he was notified of the hearing. Hearing Mr. Pollak's presentation, he stated that it sounded excellent, and an asset as presented. But there has been a history of bars in Amherst that have been trouble. Mr. Pollak's restaurant may be acceptable, but could also become a liability. Mike's Westview Café, for example, had problems, and the neighborhood needs protection from bar patrons. Ms. Schwartz noted that the submitted Management Plan does not talk about the management of bar patrons.

The Board noted that the differences between the former Mike's Café and the proposed restaurant are dramatic. However, perhaps a "happy medium" with limited hours of operation would help mollify the neighbors. Or a condition of the permit may have an expiration date, so that the Board could review the impact of the restaurant and Mr. Pollak could apply for a modification of the conditions if needed.

Mr. Pollak responded to the neighbors' concerns with the following comments:

- As a neighbor who is operating a pizza business at the location under consideration, those who are objecting now have had every opportunity to talk to him earlier about their concerns, but haven't.
- He may easily close earlier than 1 a.m., but has been told to request the outside limits for hours of operation, and everything else that he may potentially want for the operations.
- He does not want a bar; he wants a restaurant that will be integrated into the community.
- He will be as concerned about excess noise as the neighbors.
- As for parking, previous Special Permits approved seating for 60 with only the parking lot behind the building. He is trying to take responsibility for overflow parking, and dealing with it in a proactive way.

Ms. Tillona noted that she sees an applicant who wants to provide a restaurant for the community, and she sees neighbors who say they want a restaurant, but who have "concerns." People can work together, and both sides can be happy in this case, she observed.

Mr. Frank agreed, and added that Mr. Pollak has proved himself willing to change his plans, and all concerned can work out the differences.

The Board suggested a few ideas to discuss for a compromise.

- Require patrons to be seated
- Limit the hours of operation, but allow extended hours for private functions/parties not open to the public

Ms. Tillona asked the applicant what kind of restaurant he is planning – upscale or a casual diner? Mr. Pollak responded that its style will be similar to Judie's in downtown Amherst, or the former Atlantis. It will have good food, a superior chef has been booked, and yes, there will be a small bar for alcohol service as in Judie's. The building does not have a sprinkler system, so it cannot be a bar, the applicant stated. He will not be dimming the lights.

Mark Snow, the Assistant Building Commissioner, stated that a new State Act 304 now has heavy conditions and penalties for bars. Since the bar disaster in Rhode Island a couple of years ago,

regulations for bars are now much tougher.

Mr. Schwartz said that he regrets if Mr. Pollak feels attacked by the neighbors. When Mike's Westview Café operated, he often had 50-60 folks coming through his backyard when Mike's closed at night. "The Harp", now operating at the former bar, is much better controlled, he said. The neighbors were led to believe that there could be a repeat of another poorly controlled bar scene with this application.

Several neighbors apologized to Mr. Pollak for their misunderstanding of his proposal.

Mr. Burbine stated that he recognizes Mr. Pollak's good intentions. He appealed Mr. Pollak's earlier Special Permit because he was told that was the only way to have his concerns heard.

Mr. Burbine repeated his request for specific conditions for parking. He said that the House of Teriyaki next door to Mr. Pollak's property takes up a good deal of parking. If all the spaces are taken at that restaurant's property, Burbine gets the overflow parking in his driveway at the Walnut Inn, he said. The Walnut Inn has space for about 40 cars.

The Board responded that Mr. Burbine must take responsibility for a trespassing situation himself. Mr. Burbine can post a "private property" or "patrons only" sign to control unwanted parking. The Board noted that Mr. Pollak is taking a pro-active approach with his proposal for extra parking.

Ms. Greenbaum moved to close the evidentiary part of the public hearing. Mr. Frank seconded the motion, and the vote was unanimous to close the hearing.

**Public Meeting:**

The Board agreed that a full-service restaurant in a Village Center Business Zoning District at that location is an appropriate use. Restaurants have existed in the applicant's building for many years, and the applicant had eliminated any expansion of the restaurant size and scope with this application.

The Board agreed that limiting the regular hours of operation at this time, but allowing for extended times for private parties should eliminate the possibility of a disruptive bar scene occurring at this location. The Special Permit could be reviewed after a year to see if the business is operating as proposed.

The Board noted that the placement of the building on the lot is non-conforming as to the Zoning Bylaw dimensional regulations for front and side setbacks - the front steps and the side fire escape extend into the setbacks. However, the proposal is not extending the non-conformity in any way.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 – The proposed full-service restaurant is suitably located in a Business Village Center zoning district, as is acoustic entertainment. A bar/restaurant already is located in the area less than a mile away that the neighbors find satisfactory.

10.381 – The proposal is compatible with existing uses, since there is already a mix of other business, religious and residential uses in the Village Center. Historically the building was used as an inn since the 18<sup>th</sup> century, and has been a restaurant since the 1980's.

10.382 & 10.385 – The proposal will remain similar to the previous restaurants at this location, and will not be a visual or auditory nuisance, since the entertainment offered will be non-amplified and there will be no congregation of patrons outside the building. The eastern side of the parking lot shall remain screened.

10.383 & 10.387 – The proposal will provide adequate on-site and valet off-site parking for the proper management of the restaurant. Safe and convenient vehicular and pedestrian movement will be improved on-site, with clearly marked parking spaces, a fire lane, and two accessible ramps as means of egress for the restaurant. The permit conditions management of noise on site and limits the hours of operation. Delivery vehicles will continue to use the back door of the restaurant.

10.384 & 10.389 - Adequate facilities are provided and adequate methods of disposal will be employed. The management plan details information about the proper operation of the restaurant and methods of waste disposal.

10.391 – The proposal protects to the extent feasible the historic features of the 19<sup>th</sup> century building in that no changes will be made to the exterior of the building other than an additional handicapped accessible ramp and a new ramp to the basement.

10.393 – The proposal protects against the intrusion of lighting, since the building and parking lighting will be downcast

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw, since the restaurant will enhance the services offered to the citizens of this Town.

#### **Zoning Board Decision:**

Ms. Greenbaum made a motion to APPROVE the Special Permit application with conditions.

Mr. Frank seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to modify Special Permit ZBA FY2005-00037 to eliminate outdoor dining and an outdoor cooler, and to modify Condition #17 to eliminate amplification of music on the premises at 1185 North Pleasant Street (Map 5A, Parcel 87, B-VC Zoning District) as requested in the application filed by Robert Pollak, with conditions

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ZINA TILLONA

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HILDA GREENBAUM

\_\_\_\_\_  
RUSSELL FRANK

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2006 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2006.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2006  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2006,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to modify Special Permit ZBA FY2005-00037 to eliminate outdoor dining and an outdoor cooler, and to modify Condition #17 to eliminate amplification of music on the premises at 1185 North Pleasant Street (Map 5A, Parcel 87, B-VC Zoning District), as requested in the application filed by Robert Pollak, subject to the following conditions:

1. The changes to the building shall be according to the plans drawn by Ford Gillen Architects, dated 12/23/05, approved by the Board on January 12, 2006, and on file in the office of the Zoning Board of Appeals and Inspection Services.
2. A revised Management Plan shall be reviewed and approved by the Board at a public meeting prior to issuance of a building permit for the restaurant.
3. Phase 1 of the restaurant shall be delivery of pizza, salads, and non-alcoholic beverages. The hours of operation shall be 4 pm to 11:30 pm seven (7) days a week.
4. The hours of operation for Phase 2, the full-service restaurant, shall be from 7 a.m. to 11 p.m. seven (7) days a week for restaurant dining and for take-out service.
5. For occasional private parties, the restaurant closing may be 1 a.m. provided that the restaurant is closed to the public.
6. After 11 p.m. there shall be (Phase 2) restaurant deliveries only to the supply vehicles of the catering service. All such deliveries shall cease by 2 a.m.
7. The occupancy of the restaurant shall be limited to 49 seats.
8. There shall be no more than 12 employees on the premises at any one time.
9. All deliveries to the site shall be made to the rear of the building and between the hours of 9 a.m. and 4 p.m.
10. Trash and recycling management shall be as described in the Management Plan and as shown on the site plan. Waste kitchen oil shall be stored and contracted out for disposal.
11. The 14-space parking lot shall be suitably paved with bituminous asphalt and striped prior to issuance of the certificate of occupancy. One handicapped accessible space shall be included, designed according to the MA Architectural Access Board's standards.
12. The driveway entrance width shall not exceed 24 feet in width as determined by the Town Engineer.
13. The access into the rear parking lot from Pine Street shall be designated as a fire lane and marked to prevent parking or block access to the building.
14. Exterior lighting shall be downcast against the building.
15. A bicycle rack shall be installed on the site, as shown on the approved site plan (condition #1).
16. All employees who serve alcohol and the restaurant manager shall be appropriately trained and certified by the ServSafe Alcohol ITM program for responsible methods of serving alcohol.

17. Live entertainment in the form of acoustic music shall be permitted until closing. At the boundaries of the property, the volume of sound generated by live entertainment and other interior restaurant operations shall not exceed average background sound levels.
18. Interior lighting shall be maintained at a level of brightness that is satisfactory to the Building Commissioner.
19. The proprietor shall not permit patrons to congregate on the property outside the building. The conduct of patrons waiting outside to enter the establishment shall be supervised by restaurant staff.
20. Signage for the restaurant and parking lot/traffic movement ("entrance", "exit" and "no entry" signs) shall be submitted to the Board for review and approval at a business meeting prior to issuance of an occupancy permit.
21. Any subsequent changes to approved lighting, parking or signage shall be presented to the Board for approval at a business meeting.
22. This permit shall be reviewed by the Board at a business meeting one year from the restaurant opening and thereafter upon change of management or ownership.

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ZINA TILLONA, Chair  
Amherst Zoning Board of Appeals